

**Notice of Allowability**

Application No.

09/724,427

Applicant(s)

PALESE ET AL.

Examiner

Kimberly A. Makar, Ph.D.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3/26/07.
2. ☒ The allowed claim(s) is/are 56-62.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.   |

***Examiner's Amendment***

1. Cancellation of claims 1-55 in the response by applicant on 3/26/07 is acknowledged. Currently claims 56-62 are pending. As stated in the previous office action dated 2/26/07, claims 56-62 are allowed.

***Priority***

2. The proper priority of the current application was presented by applicant in an amendment dated 10/30/06. Simply for clarification of the record, the following priority is granted to this application:

This application is a divisional of application Serial No. 09/396,539, filed September 14, 1999, now U.S. Patent No. 6,887,699, which is a continuation of application Serial No. 09/106,377, filed June 29, 1998, now U.S. Patent No. 6,001,634, which is a divisional of application Serial No. 08/252,508, filed June 1, 1994, now U.S. Patent No. 5,854,037, which is a continuation-in-part of application Serial No. 08/190,698, filed February 1, 1994 (abandoned) which is a continuation of application Serial No. 07/925,061, filed August 4, 1992 (abandoned), which is a divisional of application Serial No. 07/527,237, filed May 22, 1990, now U.S. Patent No. 5,166,057.

***Petition for Change in Inventorship***

3. A request for a change in inventorship was submitted on 3/26/2007 from Peter Palese and Adolfo Garcia-Sastre to Peter Palese, Jeffrey Parvin and Mark Krystal.

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- Applicants have submitted a request to add inventors Jeffrey Parvin and Mark Krystal with the corresponding statements under 37 CFR 1.48(a)(2) that the error occurred without deceptive intent.
- Applicants have submitted a request to remove inventor Adolfo Garcia-Sastre with the corresponding statement under 37 CFR (a)(2) that the error occurred without deceptive intent.
- A new oath was provided and signed by inventors Peter Palese, Jeffrey Parvin and Mark Krystal on 3/26/07.
- A statement under 37 CFR 3.73(b) on behalf of the assignee MedImmune was provided 3/26/07.

Having fulfilled the requirements for a change in inventorship, the petition is granted.

***For purposes of clarity:***

- *The current specification is a substitute specification submitted 4/06/05 of 102 pages in length.*
- *The abstract can be found as a submission on 4/06/2005.*
- *The drawings can be found in the A.PE document dated 11/28/200, pages 121-145 and 164.*

***Changes to the specification:***

Please make the following corrections to page 23, line 11 of the specification submitted 04/06/05 of 102 pages in length:

FIG. 21 A-C

Please make the following corrections to page 23, line 11 of the specification submitted 04/06/05 of 102 pages in length:

FIG. 25 A-C

***Changes to the abstract***

Please make the following changes to lines 11-14 of the abstract submitted 04/06/2005:

Bicistronic mRNAs can be constructed to permit internal initiation of translation of viral sequences and allow for the expression of foreign protein coding sequences from the regular terminal initiation site, or vice versa.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly A. Makar, Ph.D. whose telephone number is 571-272-4139. The examiner can normally be reached on 8AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach, Ph.D. can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kam/6/7/07

/Daniel M. Sullivan/  
Primary Examiner  
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